

June 17, 2015

The Honorable Ronald H. Johnson  
Chairman, Committee on Homeland Security & Governmental Affairs  
United States Senate  
Washington, DC 20510

The Honorable Thomas R. Carper  
Ranking Member, Committee on Homeland Security & Governmental Affairs  
United States Senate  
Washington, DC 20510

Dear Chairman Johnson and Ranking Member Carper:

As former Administrators of the Office of Information and Regulatory Affairs (OIRA), we write to express our strong support for the Independent Agency Regulatory Analysis Act of 2015, legislation introduced by Senator Rob Portman, Senator Mark Warner, and Senator Susan Collins. We believe that this bipartisan bill would improve the quality of rulemaking by independent regulatory agencies by affirming the president's authority to extend to these agencies the same principles of regulation that have long governed executive agencies.

For thirty years, presidents of both parties have required executive agencies to consider regulatory impacts when crafting new regulations, with review by OIRA.<sup>1</sup> Chief among the requirements imposed on executive agencies is the duty to assess the benefits and costs of major new regulations and determine that the benefits of those regulations will justify the costs. To be sure, the quality of economic analysis by executive agencies has been mixed. But based on our experience, we believe this longstanding approach has improved the cost-effectiveness of regulations by enhancing accountability and analytical rigor in the rulemaking process.

To date, these principles and requirements for rulemaking have not been applied to independent regulatory agencies. These agencies are considered independent not because their method of regulation differs from executive agencies, but rather because Congress has limited the president's power to remove their top officials (either by statute or by tradition). Legal advisors to both President Reagan and President Clinton concluded that the president has the legal power to extend these requirements to independent regulatory agencies, but both presidents chose not to do so out of deference to Congress.

For years, many of us across the political spectrum have urged reconsideration of this decision. Our concern is that independent regulatory agencies typically do not engage in the economic analysis that has come to be expected from executive agencies. According to a 2014 Office of Management and Budget report, it appears that over 40 percent of the major rules developed by independent regulatory agencies over a 10-year period provided no information on

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<sup>1</sup> See Executive Order 13,563 (2011); Executive Order 12,866 (1993); Executive Order 12,291 (1981).

either costs or benefits. In 2013, not one of the 18 major rules issued by these agencies was based on a complete benefit-cost analysis.<sup>2</sup> The same was true in 2012 (21 major rules, none with a complete benefit-cost analysis), in 2011 and 2010 (17 and 0) and in 2009 (13 and 0). A recent study commissioned by the Administrative Conference of the United States reported similar findings. Out of the major rules issued by independent regulatory agencies in fiscal year 2012, only one rule was supported by a partial quantification of benefits and only 6 rules included a partial quantification of costs apart from paperwork burdens (a narrow subset of total costs).<sup>3</sup>

The Independent Agency Regulatory Analysis Act would address this problem. First, the bill affirms the authority of the president to issue an executive order extending to independent regulatory agencies the same principles that apply to executive agencies. This approach will improve regulatory analysis while preserving a degree of flexibility for future presidents to refine the requirements over time. Second, the bill adopts a balanced approach to accountability by providing for OIRA review of every proposed and final economically significant regulation, followed by a public exchange of views between OIRA and the agency concerning the quality of the agency's benefit-cost analysis and other important considerations. The bill does not permit judicial review of an agency's compliance with the terms of the executive order, but rather provides that OIRA's assessment and the agency's response will form part of the rulemaking record.

We should note that this proposed expansion of centralized regulatory review will necessitate additional funds for a modest increase in OIRA's staff, but we believe that this would prove to be money well spent on smarter regulation.

As former OIRA Administrators from Democratic and Republican administrations, we hold varying views on regulatory reform. But we are unanimous in our view that independent regulatory agencies should be held to the same good-government standards as executive agencies, and the Independent Agency Regulatory Analysis Act advances that goal.

Sincerely,

Sally Katzen  
OIRA Administrator (1993-1998)

Susan Dudley  
OIRA Administrator (2007-2009)

John Spotila  
OIRA Administrator (1999-2000)

James C. Miller III  
OIRA Administrator (1981)

John D. Graham  
OIRA Administrator (2001-2006)

Wendy Lee Gramm  
OIRA Administrator (1985-1988)

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<sup>2</sup> Office of Management & Budget, *2014 Draft Report to Congress on the Benefits and Costs of Federal Regulations*, pp. 33, 89-90.

<sup>3</sup> Curtis Copeland, *Economic Analysis & Independent Regulatory Agencies*, Report for ACUS, pp. 87-89 (Apr. 30, 2013).

Christopher C. DeMuth  
OIRA Administrator (1981-1984)

cc: Senator Rob Portman  
Senator Mark Warner  
Senator Susan Collins